

**Sun Surety Insurance Company
21 Main Street
Rapid City, South Dakota 57701**

NAIC COMPANY 10909

MARKET CONDUCT EXAMINATION REPORT

**As of
December 31, 2002**

**PREPARED BY INDEPENDENT CONTRACTORS
IN COORDINATION WITH
COLORADO DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF INSURANCE**

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Rapid City, South Dakota 57701**

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Prepared by

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June 25, 2003

The Honorable Doug Dean
Commissioner of Insurance
State of Colorado
1560 Broadway Suite 850
Denver, Colorado 80202

Commissioner Dean:

In accordance with Sections 10-1-203, C.R.S. and 10-3-1106, C.R.S., a targeted examination of the Sun Surety Insurance Company's Bail Bond business has been conducted. The Company's records were examined at the home office located at 21 Main Street, Rapid City, South Dakota, 57701. The examination covered the calendar year of January 1, 2002, to December 31, 2002.

A report of the examination of the Sun Surety Insurance Company is, herewith, respectfully submitted.

John J. Postolowski, CIE, MA, FLMI, AIRC, ACS
Chief Examiner, Market Conduct Section

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**MARKET CONDUCT
EXAMINATION REPORT
OF THE
SUN SURETY INSURANCE COMPANY**

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COMPANY HISTORY AND PROFILE

Sun Surety Insurance Company (the “Company”) was incorporated in the State of South Dakota in April 1998, and commenced business on June 2, 1998. The Company specializes in court appearance bonds, more commonly known as bail bonds. The Company received its Certificate of Authority for Fidelity and Surety on April 13, 2001 and began executing bail bonds in the State of Colorado on April 20, 2001. The Company is currently authorized to transact surety business in South Dakota, Utah, Montana, North Dakota, Minnesota, Pennsylvania, Arizona, Colorado, New Mexico, Kansas, Oklahoma, Idaho, Nebraska, Indiana, Nevada, Mississippi, and Arkansas. The Company’s home office is located in Rapid City, South Dakota.

The affairs of the company are under the direction of William R. Wood, chief executive officer.

The Company’s chief executive officers and directors at this writing are: William R. Wood, chief executive officer, Sherry K. Wood, director, Patrick E. Wood, president, Michael D. Wood, vice president of development, and Kelly D. Adams, secretary-treasurer.

Bail bond business is produced by approximately seventeen (17) direct contracted independent licensed bail bond supervising agents along with approximately thirty-three (33) licensed subagents for all business produced in Colorado.

The Company does not actively advertise bail bond business within the state of Colorado. The only advertising generally used is an ad in the yellow pages of the local telephone directory, which is placed by the local agent.

This is the Company’s first market conduct examination by the State of Colorado. The company has received no market conduct examinations from any state in the last three years.

An examination of the financial condition of the Company was made as of December 31, 2001 by Ketel Thorstenson, LLP.

The Company provided a written summary of its antifraud plan, which was submitted with its annual report to the Colorado Division of Insurance.

In 2002, the Company reported 5,287* bail bonds in force in Colorado. Based on figures reported to the Colorado Division of Insurance, the Company had \$1,605,223.45* in bail bond gross written premium.

*Data as reported by the Company

PURPOSE AND SCOPE OF EXAMINATION

This targeted market conduct report was prepared by independent examiners contracting with the Colorado Division of Insurance for the purpose of auditing certain business practices of insurers licensed to conduct the business of insurance in the State of Colorado. This procedure is in accordance with Colorado Insurance Law, Section 10-1-204, C.R.S, which empowers the Commissioner to supplement his resources to conduct market conduct examinations. The findings in this report, including all work product developed in the production of this report, are the sole property of the Colorado Division of Insurance.

The purpose of the targeted examination was to determine the Company's compliance with Colorado insurance law and with generally accepted operating principles relating to bail bond insurance laws. Examination information contained in this report should serve only these purposes. The conclusions and findings of this examination are public record. The preceding statements are not intended to limit or restrict the distribution of this report.

The examination was governed by, and was performed in accordance with, procedures developed by the National Association of Insurance Commissioners and the Colorado Division of Insurance. In reviewing material for this report, the examiners relied primarily on records and material maintained by the Company. The examination covered a twelve (12) month period of the Company's operations, from January 1, 2002 through December 31, 2002.

File sampling was based on a review of underwriting files randomly selected from file runs provided by the company. Sample sizes were chosen based on procedures developed by the National Association of Insurance Commissioners. Upon review of each file, any findings were noted on a comment form and delivered to the Company for review. Once the Company was advised of a finding contained in a comment form, the Company had the opportunity to respond and was requested to agree, disagree or otherwise justify the Company's noted action. At the conclusion of the examination, the Company was provided a summary of the findings. The examination report is a report by exception and much of the material reviewed is not addressed in the written report. Reference to any practices, procedures, or files, which contained no errors, was omitted.

An error tolerance level of plus or minus (\$10.00) was allowed in most cases where monetary values were involved. However, in cases where monetary values were generated by computer or other systematic methodology, a zero (\$0) tolerance level was applied in order to identify possible system errors. Additionally, a zero (\$0) tolerance level was applied in instances where there appeared to be a consistent pattern of deviation from the Company's established policies, procedures, rules and/or guidelines.

The report addresses only Bail Bond issues and contains information regarding exceptions to the Colorado Insurance law.

The examination included a review of the following seven (7) Company operations:

1. Company Operations and Management
2. Marketing and Sales
3. Complaint Handling
4. Producers/Agents
5. Underwriting: Applications, Forms and Rates
6. Policyholder Services
7. Claim Handling, including forfeiture judgments and return of collateral

Certain unacceptable or non-complying practices may not have been discovered in the course of this examination. Additionally, findings may not be material to all areas that would serve to assist the Commissioner.

Failure to identify or criticize specific Company practices does not constitute acceptance by the Colorado Division of Insurance. Examination findings may result in administrative action by the Division of Insurance.

EXAMINATION REPORT SUMMARY

The Company reported 5,287 bail bonds in force during the calendar year of 2002 from which fifty (50) were randomly selected to be reviewed for compliance with Colorado insurance law. The report reflects records examined from five (5) primary agents and four (4) subagents for a total of nine (9) agents subject to examination located within various territories of operation. One (1) agent failed to provide one (1) file for examination, which resulted in a total examination of forty-nine (49) files being available for review.

The examination resulted in seven (7) compliance issues due to the failure of the Company and its producers' to comply with Colorado insurance laws that govern all property and casualty insurers operating in Colorado. The following is a summary of the examiners' findings by category:

Company Operations and Management:

In the area of company operations and management, one (1) compliance issue is addressed in this report. This issue was due to the Company's failure to adhere to Colorado insurance laws pertaining to bail bond business. Regarding the compliance issue in this area it is recommended that the Company review its current procedures for monitoring agents' activities and implement routine external auditing of agents to assure future compliance with applicable Colorado Statutes and Regulations. The issue in this category is identified as follows:

- Failure to adequately monitor agents' activities in the areas of noncompliance as noted in the issues noted under the producers' section herein.

Marketing and Sales:

In the area of Marketing and Sales, no compliance issues are addressed in the report.

Complaint Handling:

In the area of complaint handling, no compliance issues are addressed in the report.

Producers/Agents:

In the area of Producers/Agents, six (6) compliance issues are addressed in this report. These issues are due to company agents' failure to adhere to Colorado insurance laws pertaining to bail bond business. Regarding the compliance issues in this area it is recommended that the Company review its current procedures for monitoring agents' activities and implement routine external auditing of agents to assure future compliance with applicable Colorado Statutes and Regulations as to each issue. The issues in this category are identified as follows:

- Failure, in some cases, of agents to comply with agent reporting requirements to the Division of Insurance.
- Failure, in some cases, of agents to maintain bonding payment schedules as required.

- Failure, in some cases, of agents to provide a list of collateral to the Company.
- Failure, in some cases, to register assumed (trade) name with the Colorado Division of Insurance.
- Failure, in some cases, to display the required fraud statement on the applications.
- Failure, in some cases, of agents to provide accurate records of fiduciary funds collected.

Underwriting:

In the area of underwriting, no compliance issues are addressed in the report.

Policyholder Services:

In the area of policyholder services, no compliance issues are addressed in the report.

Claim Handling, including forfeiture Judgments and Return of Collateral:

In the area of claims, no compliance issues are addressed in the report.

A copy of the Company's response, if applicable, can be obtained by contacting the Company or the Colorado Division of Insurance.

Results of previous Market Conduct Exams are available on the Colorado Division of Insurance's website at www.dora.state.co.us/insurance or by contacting the Colorado Division of Insurance.

SUN SURETY INSURANCE COMPANY

FACTUAL FINDINGS

BAIL BONDS

MARKET CONDUCT EXAMINATION

FACTUAL FINDINGS

COMPANY OPERATIONS AND MANAGEMENT

Issue A: Failure to adequately monitor producers' activities.

Section 10-1-127, C.R.S. – Fraudulent insurance acts – immunity for furnishing information relating to suspected insurance fraud – legislative declaration, requires, in part:

(6)(a) On and after January 1, 1997, every licensed insurance company doing business in Colorado shall prepare, implement, and maintain an insurance anti-fraud plan; except that this subsection (6) shall not apply to entities whose principal business is the assumption of reinsurance, reinsurance agreements, or reinsurance claims transactions. Insurance companies approved by the commissioner under article 5 of this title may be required, as a condition of such approval, to maintain an insurance anti-fraud plan. Each anti-fraud plan shall outline specific procedures, appropriate to the type of insurance provided by the insurance company in Colorado, to:

(I) Prevent, detect, and investigate all forms of insurance fraud, including fraud by the insurance company's employees and agents, fraud resulting from false representations or omissions of material fact in the application for insurance, renewal documents, or rating of insurance policies, claims fraud, and security of the insurance company's data processing systems:

Sun Surety Insurance Company has procedures established to audit and monitor its producers activities, but has failed to provide **adequate monitoring** (emphasis added) which appears to be a violation of the following statutes.

One (1) agent failed to provide one (1) file for examination, which resulted in a total examination of forty-nine (49) files being available for review from the sample of fifty (50) files.

1. Section 12-7-105, C.R.S. – Reports and records required – bonding agents requires in part:

(1) Commencing November 1, 2000, each licensed bail bonding agent shall provide a report to the division **no later than November 1 of each year** (emphasis added). Such report shall include but is not limited to the following information:

(f) Such further information as the division may **reasonably require** (emphasis added).

Colorado Division of Insurance Bulletin No.14-00 titled, "Annual reporting requirements for bail bonding agents," covers in detail the requirements for annual reporting in conjunction with C.R.S. 12-7-105.

The review of the nine (9) bail bonding agents annual reports for 2002 revealed that one (1) agent failed failed to provide their report to the Division of Insurance on or before November 1, 2002. This appears to be a violation of Colorado insurance law.

2. Section 12-7-108, C.R.S. – Bonding agreement – requirements – payment schedule, states in part:

(3) An arrangement for the payment of all or part of the premium, commission, or fee paid to a bail bonding agent licensed under this article shall be **in writing** (emphasis added) and shall set forth the schedule of such payments.

Regulation 1-1-7 Market Conduct Record Retention, promulgated under the authority of Section 10-1-109, C.R.S., states, in part:

III. RULE

B. RECORDS REQUIRED FOR MARKET CONDUCT PURPOSES

1. Every insurer/carrier or related entity licensed to do business in this state shall maintain its books, records, documents and other business records so that the insurer's/carrier's or related entity's claims, rating, underwriting, marketing, complaint, and producer licensing records are readily available to the commissioner. Unless otherwise stated within this regulation, records shall be maintained for the current calendar year plus two calendar years.

2. A policy record shall be maintained for each policy issued in the state. Policy records shall be maintained for the current policy term, plus two years, unless otherwise contractually required to be retained for a longer period. Provided, however, documents from policy records no longer required to be maintained under this regulation, which are used to rate or underwrite a current policy, must be maintained in the current policy records. Policy records shall be maintained so as to show clearly the policy term, basis for rating and, if terminated, return premium amounts, if any. Policy records need not be segregated from the policy records of other states so long as they are readily available to the commissioner as required under this rule. A separate copy need not be maintained in the individual policy records, provided that any data relating to that policy can be retrieved. Policy records shall include:

c. **Other information necessary** (emphasis added) for reconstruction of the rating and underwriting of the policy.

In twelve (12) of the bond files examined, the agents did not provide an arrangement for payment of premium in writing. This appears to be a violation of Colorado insurance law.

3. Section 12-7-107, C.R.S., Notice to surety, states:

(3) The bail bonding agent shall prepare a list of all collateral taken for assurance of compliance with the bond issued and the fee paid therefore. The bail bonding agent shall provide such list to the surety within twenty days of taking the collateral. Failure to provide this written list to the surety, keep a file of all such lists for two years following the end of the calendar year in which each was prepared, or provide the list or a copy thereof to the commissioner on request is a violation of this section and shall be a ground for revocation of the bail bonding agent's license.

In twenty-eight (28) bail bond files reviewed where collateral was taken, the agents failed to list and report the collateral to the Company as required. This appears to be a violation of Colorado insurance law.

4. Section 10-2-701, C.R.S., Assumed names-registration, states:

“Any insurance producer using an assumed name, including without limitation a trade or fictitious name, under which the insurance producer conducts business shall register the name with the insurance commissioner prior to using the assumed name. The commissioner shall not accept registration of any name that is similar to another currently on file, that would tend to be misleading to the public, or that is identical or similar to the name of any producer whose license has been revoked or suspended. Every insurance producer licensee shall promptly file with the commissioner a written notice of any change in or discontinuation of the use of any name. The commissioner may promulgate all rules necessary and proper to implement the provisions of this section.”

Eight (8) of the nine (9) agents examined were conducting business under an assumed (trade) name which had not been registered with the insurance commissioner. This appears to be a violation of Colorado insurance law.

5. Section 10-1-127 C.R.S. Fraudulent insurance acts – immunity for furnishing information relating to suspected insurance fraud – legislative declaration states, in part:

(7)(a) On and after January 1, 1997, each insurance company shall provide on all printed applications for insurance, or on all insurance policies, or on all claim forms provided and required by an insurance company, or required by law, whether printed or electronically transmitted, a statement in conspicuous nature, permanently affixed to the application, insurance policy, or claim form substantially the same as the following: **"It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines denial of insurance, and civil damages. An insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policy holder or claimant for the purpose of defrauding or attempting to defraud the policy holder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado division of insurance within the department of regulatory agencies."**

In thirty-six (36) bail bond files reviewed, there was no application, indemnity agreement, and/or a separate notice displaying the fraud statement. This appears to be a violation of Colorado insurance law.

6. Section 10-2-704, C.R.S., Fiduciary responsibilities, states:

(1)(a) All premiums belonging to insurers and all unearned premiums belonging to insureds received by an insurance producer licensee under this article shall be treated by such insurance producer in a fiduciary capacity. The commissioner may promulgate such rules as are necessary and proper relating to the treatment of such premiums.

Section 12-7-109, C.R.S., Prohibited activities - penalties, states:

(1) It is unlawful for any licensee under this article to engage in any of the following activities:

(k) Accept anything of value from a person on whose bond such licensee is indemnitor or from another on behalf of such principal except the premium; except that the bail bonding agent licensed under this article may accept collateral security or other indemnity from the person on whose bond such bail bonding agent is indemnitor or from another on behalf of such principal. All such collateral or other indemnity shall be returned pursuant to the requirements contained in paragraph (d.5) of this subsection (1). The bail bonding agent licensed under this article shall preserve and separately retain such collateral and shall be responsible for the return of all such collateral taken and shall be liable for failure thereof as will also be the surety company. When a bail bonding agent accepts collateral as security pursuant to this paragraph (k), such bail bonding agent shall give a written receipt for such collateral to the person on whose bond such bail bonding agent is indemnitor or to another on behalf of such principal and the surety, which shall provide in detail a full description of the collateral received. In the event of the failure of or inability for any reason of a bail bonding agent or such bail bonding agent's heirs or assignees to return collateral as required in this paragraph (k), the commissioner or the commissioner's designee is authorized to take immediate possession of the collateral and take whatever actions are necessary and appropriate to assure compliance with the obligations of this article relating to the return of collateral. The commissioner is authorized to utilize any or all of the qualification bond required in section [12-7-103](#) (3) for any costs incurred. Any such payment received by the commissioner is hereby appropriated to the division of insurance in addition to any other funds appropriated for its normal operation. The commissioner shall forfeit a qualification bond in the amount necessary to pay any final, nonappealable judgment award for failure to return collateral, including costs and attorney's fees, if awarded.

Regulation 1-2-1, Concerning Agent Fiduciary Responsibilities, promulgated under the authority of 10-1-108(8), 10-1-109, 10-2-220, and 10-3-1110, Colorado Revised Statutes (C.R.S.), states, in part:

III Rule

B. Upon receipt, the insurance producer must treat all premiums and returned premiums in a fiduciary capacity, including but not limited to the following:

1. Upon receipt the insurance producer must treat all premium and return premiums as trust funds and segregate them from his own funds, and
2. The insurance producer must keep an accurate record of all fiduciary funds, and
3. The insurance producer must not treat insurance premiums or returned premiums as a personal or business asset, and . . .

Four (4) agents were unable to provide an accurate record of fiduciary funds collected as required by Colorado insurance law as well as their “Agency Contract.” This appears to be a violation of Colorado insurance law.

Recommendation # 1:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Sections 10-1-127, 10-2-701, 10-2-704, 12-7-105, 12-7-107 and 12-7-108, C.R.S. and Regulation 1-2-1. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed, revised and implemented all procedures related to the monitoring of all of its agents’ activities to ensure compliance with Colorado insurance law.

FACTUAL FINDINGS

PRODUCERS / AGENTS

B: Failure, in some cases, to comply with agent reporting requirements to the Division of Insurance.

Section 12-7-105, C.R.S., Reports and records required – bonding agreements – division, states, in part:

- (1) Commencing November 1, 2000, each licensed bail bonding agent shall provide a report to the division **no later than November 1** (emphasis added) of each year. Such report shall include but is not limited to the following information:

- (f) Such further information as the division may **reasonably require** (emphasis added).

Colorado Division of Insurance Bulletin No.14-00 titled, “Annual reporting requirements for bail bonding agents,” covers in detail the requirements for annual reporting in conjunction with Section 12-7-105, C.R.S.

Agents review for 2002

Agent Population	Sample Size 5 primary and 4 subagents	Number of Exceptions	Percentage to Sample
50	9	1	11%

The review of the nine (9) bail bonding agents annual reports for 2002 revealed that one (1) agent failed to provide their annual report to the Division of Insurance on or before November 1, 2002. This appears to be a violation of Colorado insurance law.

Recommendation # 2:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 12-7-105, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed and implemented all procedures relating to monitoring agent reporting requirements to ensure accuracy and compliance with the Colorado insurance law.

Issue C: Failure, in some cases, of agents to maintain bonding payment schedules as required.

Section 12-7-108, C.R.S., Bonding agreement – requirements – payment schedule, states, in part:

(3) An arrangement for the payment of all or part of the premium, commission, or fee paid to a bail bonding agent licensed under this article shall be **in writing** (emphasis added) and shall set forth the schedule of such payments.

Regulation 1-1-7 Market Conduct Record Retention, promulgated under the authority of Section 10-1-109, C.R.S., states, in part:

III. RULE

B. RECORDS REQUIRED FOR MARKET CONDUCT PURPOSES

1. Every insurer/carrier or related entity licensed to do business in this state shall maintain its books, records, documents and other business records so that the insurer's/carrier's or related entity's claims, rating, underwriting, marketing, complaint, and producer licensing records are readily available to the commissioner. Unless otherwise stated within this regulation, records shall be maintained for the current calendar year plus two calendar years.

2. A policy record shall be maintained for each policy issued in the state. Policy records shall be maintained for the current policy term, plus two years, unless otherwise contractually required to be retained for a longer period. Provided, however, documents from policy records no longer required to be maintained under this regulation, which are used to rate or underwrite a current policy, must be maintained in the current policy records. Policy records shall be maintained so as to show clearly the policy term, basis for rating and, if terminated, return premium amounts, if any. Policy records need not be segregated from the policy records of other states so long as they are readily available to the commissioner as required under this rule. A separate copy need not be maintained in the individual policy records, provided that any data relating to that policy can be retrieved. Policy records shall include:

c. **Other information necessary** (emphasis added) for reconstruction of the rating and underwriting of the policy.

Bail bonds in force for 2002

Population	Sample Size	Examined	Number of Exceptions	Percentage to Sample
5,287	50	49*	12	24%

*One (1) agent failed to provide one (1) file for examination, which resulted in a total examination of forty-nine (49) files being available for review.

In twelve (12) files examined in four (4) agent's offices with premium balances due, the agents did not provide an arrangement for payment of premium in writing. This is in possible violation of Colorado insurance law.

Recommendation # 3:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 12-7-108, C.R.S. and Regulation 1-1-7. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed, revised and implemented all procedures to ensure that agents' comply with bonding agreement and payment schedule standards as required by Colorado insurance law.

Issue D: Failure, in some cases, of agents to provide a list of collateral to the Company

Section 12-7-107, C.R.S., Notice to Surety, states:

(3) The bail bonding agent shall prepare a list of all collateral taken for assurance of compliance with the bond issued and the fee paid therefor. The bail bonding agent shall provide such list to the surety within twenty days of taking the collateral. Failure to provide this written list to the surety, keep a file of all such lists for two years following the end of the calendar year in which each was prepared, or provide the list or a copy thereof to the commissioner on request is a violation of this section and shall be a ground for revocation of the bail bonding agent's license.

In twenty-eight (28) bail bond files involving collateral reviewed in the five (5) offices of bail bonding primary agents, five (5) agents failed to provide the Company with a list of the collateral received. This is a possible violation of Colorado insurance law.

Recommendation # 4:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 12-7-107, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed, revised and implemented procedures relating to collateral lists to surety to ensure compliance with Colorado insurance law.

Issue E: Failure, in some cases, to register assumed (trade) name with the Colorado Division of Insurance.

Section 10-2-701, C.R.S., - Assumed names-registration, states:

“Any insurance producer using an assumed name, including without limitation a trade or fictitious name, under which the insurance producer conducts business shall register the name with the insurance commissioner prior to using the assumed name. The commissioner shall not accept registration of any name that is similar to another currently on file, that would tend to be misleading to the public, or that is identical or similar to the name of any producer whose license has been revoked or suspended. Every insurance producer licensee shall promptly file with the commissioner a written notice of any change in or discontinuation of the use of any name. The commissioner may promulgate all rules necessary and proper to implement the provisions of this section.”

Agents review for 2002

Agent Population	Sample Size 5 primary and 4 subagents	Number of Exceptions	Percentage to Sample
50	9	8	89%

A review of the five (5) bail bonding primary agents and four (4) subagents showed that eight (8) of these agent's failed to register assumed (trade) names used with the Division of Insurance. This review represented forty-four (44) of the forty-nine (49) bail bond files examined. This appears to be a violation of Colorado insurance law.

Recommendation # 5:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 10-2-701, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed, revised and implemented procedures to monitor and ensure registration of agents assumed (trade) names as required by Colorado insurance law.

Issue F: Failure, in some cases, to display the required fraud statement on all bail bond applications.

Section 10-1-127, C.R.S., Fraudulent insurance acts-immunity for furnishing information relating to suspected insurance fraud-legislative declaration, states:

(7)(a) On and after January 1, 1997, each insurance company shall provide on all printed applications for insurance, or on all insurance policies, or on all claim forms provided and required by an insurance company, or required by law, whether printed or electronically transmitted, a statement, in conspicuous nature, permanently affixed to the application, insurance policy, or claim form substantially the same as the following:

"It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance, and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado division of insurance within the department of regulatory agencies."

Bail bonds in force for 2002

Population	Sample Size	Examined	Number of Exceptions	Percentage to Sample
5,287	50	49	36	73%

In thirty-six (36) of the forty-nine (49) bail bond files examined in five (5) offices of bail bonding primary agents, the applications or bonding agreements used by the five (5) agents failed to display the required fraud statement, and/or there was no separate notice containing the statement provided the client. This is a possible violation of Colorado insurance law.

Recommendation # 6:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 10-1-127, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed, revised and implemented all procedures regarding use of applications displaying the required fraud statement necessary to ensure compliance with Colorado insurance law.

Issue G: Failure, in some cases, of agents to provide accurate records of fiduciary funds collected.

Section 10-2-704, C.R.S., Fiduciary responsibilities, states:

(1)(a) All premiums belonging to insurers and all unearned premiums belonging to insureds received by an insurance producer licensee under this article shall be treated by such insurance producer in a fiduciary capacity. The commissioner may promulgate such rules as are necessary and proper relating to the treatment of such premiums.

Section 12-7-109, C.R.S., Prohibited activities - penalties, states:

(1) It is unlawful for any licensee under this article to engage in any of the following activities:

(k) Accept anything of value from a person on whose bond such licensee is indemnitor or from another on behalf of such principal except the premium; except that the bail bonding agent licensed under this article may accept collateral security or other indemnity from the person on whose bond such bail bonding agent is indemnitor or from another on behalf of such principal. All such collateral or other indemnity shall be returned pursuant to the requirements contained in paragraph (d.5) of this subsection (1). The bail bonding agent licensed under this article shall preserve and separately retain such collateral and shall be responsible for the return of all such collateral taken and shall be liable for failure thereof as will also be the surety company. When a bail bonding agent accepts collateral as security pursuant to this paragraph (k), such bail bonding agent shall give a written receipt for such collateral to the person on whose bond such bail bonding agent is indemnitor or to another on behalf of such principal and the surety, which shall provide in detail a full description of the collateral received. In the event of the failure of or inability for any reason of a bail bonding agent or such bail bonding agent's heirs or assignees to return collateral as required in this paragraph (k), the commissioner or the commissioner's designee is authorized to take immediate possession of the collateral and take whatever actions are necessary and appropriate to assure compliance with the obligations of this article relating to the return of collateral. The commissioner is authorized to utilize any or all of the qualification bond required in section [12-7-103](#) (3) for any costs incurred. Any such payment received by the commissioner is hereby appropriated to the division of insurance in addition to any other funds appropriated for its normal operation. The commissioner shall forfeit a qualification bond in the amount necessary to pay any final, nonappealable judgment award for failure to return collateral, including costs and attorney's fees, if awarded.

Regulation 1-2-1, Concerning Agent Fiduciary Responsibility, promulgated under the authority of 10-1-108(8), 10-1-109, 10-2-220 and 10-3-1110, Colorado Revised Statutes (C.R.S.), states, in part:

III Rule

B. Upon receipt, the insurance producer must treat all premiums and returned premiums in a fiduciary capacity, including but not limited to the following:

1. Upon receipt the insurance producer must treat all premium and return premiums as trust funds and segregate them from his own funds, and
2. The insurance producer must keep an accurate record of all fiduciary funds, and
3. The insurance producer must not treat insurance premiums or returned premiums as a personal or business asset, and . . .

Bail bonds in force for 2002			
Agent Population	Sample Size 5 primary agents	Number of Exceptions	Percentage to Sample
50	5	4	80%

A review of the five (5) bail bonding primary agent's business accounts revealed that four (4) agents were unable to provide an accurate record of fiduciary funds collected as required by Colorado Revised Statutes as well as their agency contract. This review represented twenty-five (25) out of the forty-nine (49) files reviewed. This appears to be a violation of Colorado insurance laws.

Recommendation # 7:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Sections 10-2-704 and 12-7-109, C.R.S. and Regulation 1-2-1. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed, revised and implemented all procedures relating to the handling of fiduciary funds received by agents to ensure compliance with the Colorado insurance law.

Summary of Issues and Recommendations

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